

ASSIGNMENT AGREEMENT

Assignment Agreement (the “**Agreement**”), dated _____, 2011, by and between the undersigned Participating Vendor (the “**Assignor**” or “**Vendor**”) and the undersigned Qualified Purchaser (the “**Assignee**” or “**Purchaser**”), a [_____] with a FEIN # of [_____].

I. This Agreement is being executed and delivered by Vendor and Purchaser pursuant to the State of Illinois’ Vendor Payment Program’s “Program Terms,” effective as of March 18, 2011, in the form attached hereto as **Exhibit A** (the “**Program Terms**”), and is subject to the terms and conditions thereof, which are hereby incorporated by reference in their entirety. Capitalized terms used but not defined herein have the meanings ascribed to them in the Program Terms. In the event of any inconsistency between the Program Terms and this Agreement, the Program Terms will prevail.

II. Assignor hereby irrevocably assigns, transfers, and delivers all of Vendor’s right, title and interest to receive sums due or which shall become due and owing to Vendor, including without limitation any prompt payment interest penalty amount accruing under the State Prompt Payment Act (30 ILCS 540 et seq.) based on the account(s) receivable set forth on **Schedule 1** hereto (each, an “**Assigned Receivable**” and, collectively, the “**Assigned Receivables**”). Purchaser hereby acknowledges and accepts Vendor’s assignment of, and assumes from Vendor, each Assigned Receivable, and Purchaser agrees to perform promptly and in good faith its obligations under this Agreement with respect to each such Assigned Receivable, including, without limitation, payment of the Base Invoice Amount to Vendor and collection of the Prompt Payment Penalty as set forth in this Agreement and in accordance with the Program Terms. Vendor hereby acknowledges the right and duty of the Purchaser, as purchaser of each Assigned Receivable, to take such steps as Purchaser deems necessary and as required by the Program Terms to collect from the State amounts due with respect to such Assigned Receivable (subject to State Offsets), including seeking payment through the State’s Court of Claims.

III. Vendor represents and warrants to Purchaser that:

1. Vendor has good title and authority to assign each Assigned Receivable to Purchaser, free and clear of any material liens and encumbrances, including any tax or judicial liens, and that assignment of each Assigned Receivable is not prohibited by, or otherwise prevented by applicable law from being transferred in accordance herewith;
2. The assignment of each Assigned Receivable hereunder is not subject to or conditioned upon Bankruptcy Court approval pursuant to applicable provisions of the United States Bankruptcy Code;
3. **To Vendor’s knowledge, as of the date hereof, Vendor does not owe any monies to the State thereby entitling the State to any offsets against the Assigned Receivable; and**

4. Each Assigned Receivable does not constitute a right to payment under the Medical Assistance Program (including Medicaid).

Any purported assignment of any such right to payment under the Medical Assistance Program (including Medicaid) hereby shall be deemed void *ab initio*. This Assignment shall not be construed as a release of claims or waiver of any defenses against Vendor which the State may assert against Vendor or Purchaser.

IV. With respect to each Assigned Receivable, in consideration of Vendor's assignment of such Assigned Receivable to Purchaser hereunder, in accordance with the Program Terms, and subject to any State Offsets, Purchaser will pay to Vendor one hundred percent (100%) of the unpaid principal amount of the invoice associated with such Assigned Receivable (the "**Base Invoice Amount**"), to be delivered as follows:

1. (a) Within 10 days after the date the Purchaser receives a State Acknowledgement for the Assigned Receivable it has accepted hereunder, Purchaser (i) will pay ninety percent (90%) of the Base Invoice Amount directly to Vendor (the "**Initial Payment**"), and (ii) will deposit ten percent (10%) of the Base Invoice Amount (the "**Deferred Payment**") into a Deferred Payment Reserve Account maintained by the Purchaser in accordance with the Program Terms. The Initial Payment shall be made in immediately available U.S. funds by check or wire transfer, in accordance with the instructions of the Vendor.

- (b) Subject to the Program Terms, the Deferred Payment Reserve Account will be maintained and controlled by Purchaser at its sole cost and at no cost (whether in the form of fees or otherwise) to Vendor. Purchaser shall not deposit funds into or release or withdraw funds from the Deferred Payment Reserve Account except as provided in the Program Terms. The Deferred Payment Reserve Account will be maintained as a non-interest-bearing account. Purchaser will track and maintain an ongoing accounting of the funds in the Deferred Payment Reserve Account, identifying the dollar amount of funds attributable to the Deferred Payment for the Assigned Receivable (the "**Pro Rata Reserve Amount**"). Purchaser shall promptly furnish a copy of such accounting to the State Comptroller and the State's Department of Central Management Services ("**CMS**") on a monthly basis, no later than 30 days after the end of each month, and otherwise, upon the request of the State Comptroller or CMS from time to time.

2. Subject to subsections 3 and 4, below, within 10 days after Purchaser's receipt of the amount due from the State in respect of the Base Invoice Amount, Purchaser will deliver written notice to the relevant State agency, in a form provided by the State, setting out the Purchaser's estimate of the amount of the prompt payment penalty due from the State with respect to the Assigned Receivable (the "**Prompt Payment Penalty**") and requesting such State agency to confirm the amount of the Prompt Payment Penalty and submit a Voucher for the Prompt Payment Penalty to the State Comptroller. The relevant State agency shall notify the

Purchaser in writing of the actual amount of the Prompt Payment Penalty and the date on which such State agency submitted a Voucher to the State Comptroller for the Prompt Payment Penalty.

3. Within 5 days after Purchaser has received such notice from the relevant State agency of the actual amount of the Prompt Payment Penalty and the date on which a Voucher for the Prompt Payment Penalty was submitted to the State Comptroller, Purchaser will release the following amounts from the Deferred Payment Reserve Account:

- (a) to Purchaser, an amount equal to the sum of the Prompt Payment Penalty plus the amount, if any, of State Offsets charged against payment of the Base Invoice Amount, provided that in no event shall such amount exceed the Pro Rata Reserve Amount attributable to the Assigned Receivable; and
- (b) to Vendor, an amount equal to the balance of the Pro Rata Reserve Amount (if any) remaining in the Deferred Payment Reserve Account after the disbursement of the funds contemplated by subsection 3(a) above, as partial payment of the Deferred Payment due and owing to Vendor from Purchaser.

Payment of the foregoing amounts shall be made in immediately available U.S. funds by check or wire transfer in accordance with the instructions of the Vendor. Vendor shall concurrently deliver to Purchaser written evidence of the relevant State agency's submission to the State Comptroller of a Voucher for such Prompt Payment Penalty.

4. Within 5 days after Purchaser's receipt of the Base Invoice Amount and the Prompt Payment Penalty associated with the Assigned Receivable (less any State Offsets) (the Base Invoice Amount and the Prompt Payment Penalty, less any State Offsets, collectively, the **"Full Payment"**), Purchaser will notify Vendor in writing of such payment and will pay to Vendor an amount equal to (a) the Deferred Payment, less (b) the amount paid to Vendor pursuant to subsection 3(b) hereof, less (c) any additional State Offsets charged against such Full Payment (without duplication of any previous State Offsets deducted pursuant to subsection 3(a) hereof). Such amount shall be paid by Purchaser in immediately available U.S. funds by check or wire transfer, in accordance with the instructions of the Vendor, out of Purchaser's own account and not out of the Deferred Payment Reserve Account.

5. If the aggregate amount of State Offsets attributable to the Assigned Receivable, if any, deducted by the State from the Full Payment exceeds the sum of (a) the Pro Rata Reserve Amount in the Deferred Payment Reserve Account and (b) the amount of the Prompt Payment Penalty (the excess amount being the **"Unsecured Shortfall"**), Purchaser may, in its discretion and at its sole cost and obligation, seek the Unsecured Shortfall directly from Vendor. Purchaser's sole recourse in respect of any Unsecured Shortfall will be against Vendor. Vendor, in its sole discretion, may agree by express written consent to permit Purchaser to recover any Unsecured Shortfall by offset against amounts otherwise owed by Purchaser to Vendor in respect of any other account(s) receivable assigned by Vendor to Purchaser pursuant to the Program.

Purchaser acknowledges and agrees that under no circumstances will Purchaser have any recourse against the State with respect to the recovery of all or any portion of any Unsecured Shortfall.

V. From and after the effective date hereof, Vendor hereby agrees to pay to Purchaser all amounts Purchaser may receive from the State on account of the Assigned Receivable(s).

VI. The Assigned Receivable(s) (or any interest therein) may not be assigned, sold or otherwise transferred by Purchaser to any other person or entity without the prior execution and delivery to the State of a Qualified Purchaser Designation with respect to the subsequent assignee and a representation letter in the form attached to the Program Terms as Exhibit E, together with written notice of such subsequent assignment to the State Comptroller, CMS and the Vendor. No such assignment, sale or transfer may be made for the purpose of securitizing Assigned Receivables. Any purported assignment, sale or other transfer in violation of this Agreement or the Program Terms shall be deemed void *ab initio*. The State will have the right to review and approve the identity of any assignee that intends to take assignment of the Assigned Receivable(s), and such assignee shall expressly assume all of the obligations of the Purchaser hereunder and under the terms of any ancillary documents executed by the Purchaser in connection with the Program.

VII. Each of Vendor and Purchaser shall retain all of its respective rights and remedies at law and in equity that may arise as a result of a failure by the other party to perform its duties or obligations in accordance with the provisions of this Agreement and the Program Terms.

VIII. Vendor and Purchaser have structured the transactions contemplated by this Agreement as a sale and intend the transfer and conveyance of the Assigned Receivable(s) hereunder to be an absolute and irrevocable true sale by Vendor to Purchaser that provides Purchaser with the full benefits and burdens of ownership of the Assigned Receivable(s). Neither Vendor nor Purchaser intends the transactions contemplated hereunder to be a loan from Purchaser to Vendor. If, notwithstanding the stated intention of Vendor and Purchaser, the transfer and conveyance of any Assigned Receivable herein is determined by a court of competent jurisdiction to be a secured loan and not a sale, then, in such event, this Agreement shall constitute a security agreement under the Uniform Commercial Code and other applicable law with respect to such Assigned Receivable. For this purpose only, Vendor hereby grants Purchaser a perfected, first priority security interest in all of Vendor's right, title and interest in, to and under such Assigned Receivable and the proceeds thereof to secure the repayment of the Full Payment amount. In the event this Agreement shall have been characterized as a security agreement, Purchaser shall have, with respect to such Assigned Receivable, in addition to the rights and remedies which it may have under this Agreement, all the rights and remedies provided to a secured creditor under the Uniform Commercial Code and other applicable law, which rights and remedies shall be cumulative.

IX. The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and signed by Vendor, Purchaser and CMS.

X. All communications or notices required under this Agreement shall be in writing and shall be delivered to Vendor and Purchaser at their respective addresses set forth on the signature page to this Agreement, with a copy to the Illinois Department of Central Management Services, attention: General Counsel.

XI. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Illinois without giving effect to conflicts of law principles that would cause the application of the law of any jurisdiction other than the laws of the State of Illinois.

NOTICE TO VENDOR: AS PROVIDED ABOVE AND IN THE PROGRAM TERMS, VENDOR (AS ASSIGNOR) WILL RECEIVE 90% OF THE BASE INVOICE AMOUNT WITHIN 10 DAYS AFTER PURCHASER (AS ASSIGNEE) RECEIVES A STATE ACKNOWLEDGEMENT WITH RESPECT TO AN ASSIGNED RECEIVABLE.

VENDOR, HOWEVER, WILL RECEIVE THE REMAINING 10% OF THE BASE INVOICE AMOUNT (SUBJECT TO ANY STATE OFFSETS) ONLY AFTER PURCHASER HAS RECEIVED FULL PAYMENT FROM THE STATE WITH RESPECT TO THE ASSIGNED RECEIVABLE, INCLUDING PAYMENT BY THE STATE OF THE PROMPT PAYMENT PENALTY AMOUNT (SUBJECT TO ANY STATE OFFSETS). THERE IS NO DATE CERTAIN ON OR BY WHICH FULL PAYMENT BY THE STATE WILL BE MADE AND, AS A CONSEQUENCE, ON OR BY WHICH VENDOR WILL RECEIVE THE REMAINING 10% OF THE BASE INVOICE AMOUNT (SUBJECT TO ANY STATE OFFSETS).

IN ADDITION, THE STATE MAY IDENTIFY ALTERNATIVE SOURCES OF PAYMENT OF OUTSTANDING VOUCHERS FOR ASSIGNED RECEIVABLES, INCLUDING WITHOUT LIMITATION THROUGH ONE OR MORE BORROWINGS EFFECTED BY THE STATE, THAT WOULD ALLOW THE STATE TO MAKE FULL PAYMENT (SUBJECT TO ANY STATE OFFSETS) ON THE ASSIGNED RECEIVABLE AT ANY TIME, INCLUDING IMMEDIATELY AFTER THE EFFECTIVE DATE OF THE ASSIGNMENT OF THE ASSIGNED RECEIVABLE HEREUNDER. THE STATE, HOWEVER, CAN GIVE NO ASSURANCE AS TO THE AVAILABILITY OR TIMING OF SUCH SOURCES OF PAYMENT, WHICH COULD REQUIRE LEGISLATIVE ACTION BY THE STATE'S GENERAL ASSEMBLY AND THE SIGNATURE OF THE GOVERNOR.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Purchaser and Vendor have caused this Assignment Agreement to be executed by their duly authorized representatives as of the date set forth above.

ASSIGNEE/PURCHASER:

[_____]

By: _____

Name:

Title:

Address:

Date:

ASSIGNOR/VENDOR:

[_____]

By: _____

Name:

Title:

Address:

Date:

Schedule 1

Assigned Receivable(s)

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